

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2007

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1305-CR

Cir. Ct. Nos. 2002CF3391
2002CF4786

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VICTOR D. REEL,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: WILLIAM W. BRASH and PATRICIA D. McMAHON, Judges. *Affirmed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Victor D. Reel appeals judgments convicting him of one count of misdemeanor battery, two counts of substantial battery, all with

use of a dangerous weapon, and one count of solicitation to commit bribery of a witness, as a habitual criminal. He also appeals an order denying his motion for postconviction relief. We affirm.

¶2 Reel argues that he received ineffective assistance of trial counsel because his counsel did not adequately argue for exclusion of his eleven prior convictions, which were admitted to impeach him. To substantiate a claim of ineffective assistance of trial counsel, a defendant must prove that counsel performed deficiently and that he or she was prejudiced by counsel's performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prove deficient performance, a defendant must show specific acts or omissions of counsel that are "outside the wide range of professionally competent assistance." *Id.* at 690. To prove prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

¶3 Even if Reel's counsel's argument was inadequate, Reel's ineffective assistance of counsel claim fails because he cannot show that he was prejudiced. In Wisconsin, all prior convictions are "relevant to a witness's character for truthfulness because [our] law presumes that criminals as a class are less truthful than persons who have not been convicted of a crime." *State v. Gary M.B.*, 2004 WI 33, ¶21, 270 Wis. 2d 62, 676 N.W.2d 475. "The crimes need not have any relevance to a person's character for truthfulness" *Id.*, ¶23 (citation omitted). Reel had an on-going pattern of convictions at regular intervals starting in 1990. The most recent conviction occurred only one year before the crimes in this case. Because all of the convictions were readily admissible, Reel cannot

show that he was prejudiced by counsel's failure to argue more strenuously on his behalf.¹

¶4 Reel next argues that the circuit court erred when it failed to personally instruct him how to answer on the witness stand when questioned about his prior convictions. *See State v. Fritz*, 212 Wis. 2d 284, 295, 569 N.W.2d 48 (Ct. App. 1997) (“Once the trial judge determines the number of convictions which can be used to impeach the witness, the judge should then instruct the witness and the parties about the permissible limits of impeachment.”) (citation omitted). Here, the court did exactly that, explaining: “The question is, have you ever been convicted of a crime; and the answer is yes if asked. How many times? The response should be 11 times.” Reel asserts that the circuit court was addressing the attorneys, not him personally, when it provided this explanation. We will not make the unsupported factual inference that the court was addressing only the attorneys. Moreover, we are aware of no authority for the proposition that the circuit court is required to engage in a personal colloquy with the defendant that is reflected on the record. The court’s instruction, made with Reel and his attorney present, was sufficient.

¶5 Reel next argues that he was denied due process because the circuit court relied on incomplete and inaccurate information at sentencing. His claims relate to the prosecutor’s discussion at sentencing of a prior substantial battery

¹ Reel also argues that the circuit court failed to adequately explain its exercise of discretion when it allowed the impeachment evidence. We will independently review the record to determine whether it provides a basis for the circuit court’s exercise of discretion. *Martindale v. Ripp*, 2001 WI 113, ¶29, 246 Wis. 2d 67, 629 N.W.2d 698. Even if the circuit court’s decision could have been more thorough, the record provides a basis for its exercise of discretion, as we previously explained.

charge against Reel, which was dropped. “Defendants have a due process right to be sentenced on the basis of accurate information.” *State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). “However, a defendant who requests resentencing based on inaccurate information must show both that the information was inaccurate, and that the court actually relied on the inaccurate information at the sentencing.” *Id.* We review de novo a defendant’s claim that he was denied due process at sentencing. *State v. Lynch*, 2006 WI App 231, ¶23, ___ Wis. 2d ___, 724 N.W.2d 656.

¶6 Reel contends that the prosecutor presented incomplete information to the circuit court because the prosecutor did not tell the circuit court that the victim in the prior substantial battery case did not implicate Reel until her third statement to the police. Reel has not provided a factual basis for his assertion that the victim did not implicate Reel until her third statement. We will not consider this argument further because Reel has not provided cites to the record in support of his claims. *Jenkins v. Sabourin*, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981).

¶7 Reel next contends that the court violated his due process rights by considering the dismissed substantial battery charge in framing its sentence. It is well-established that a court may consider uncharged and unproven conduct for the purpose of evaluating a defendant’s character and patterns of behavior at sentencing. *See State v. Damaske*, 212 Wis. 2d 169, 194-97, 567 N.W.2d 905 (Ct. App. 1997). We reject this claim.

¶8 Reel’s next due process argument is grounded on his claim that he did not have adequate notice that the prosecutor intended to present information about the prior battery. Reel asserts that the circuit court “erred in refusing to

adjourn the sentencing to allow counsel to investigate” This is simply not an accurate characterization of what occurred. The circuit court allowed a recess for counsel to review the documents pertaining to the prior battery and continued only after Reel’s counsel said he was ready to proceed. In addition, Reel has failed to explain what he would have done differently if his attorney had more notice about the prosecutor’s argument. We reject this claim.

¶9 Finally, Reel argues that his sentence was unduly harsh and that the circuit court did not adequately explain its rationale for imposing all of the sentences consecutively. The trial court imposed an aggregate sentence of thirty-five and one-half years, with three and one-half years’ imprisonment under the pre-truth-in-sentencing law, followed by sixteen years’ initial incarceration, and sixteen years’ extended supervision. “In sentencing a defendant to consecutive sentences, the trial court must provide sufficient justification for such sentences and apply the same factors concerning the length of a sentence to its determination of whether sentences should be served concurrently or consecutively.” *State v. Hall*, 2002 WI App 108, ¶8, 255 Wis. 2d 662, 648 N.W.2d 41. The issue before us is not whether we would have imposed such a lengthy sentence, but whether the circuit court properly exercised its discretion in doing so. The court explained that the sentence was appropriate because Reel had a history of resolving his problems by violent means, he had many prior convictions, he had not shown remorse and he blamed others for his problems. The court also considered the dismissed substantial battery charge, as was its prerogative. *See Damaske*, 212 Wis. 2d at 195. While this sentence may not be one that we would have imposed, under the established standard of review, we cannot say that the circuit court misused its discretion in choosing the sentence that it did.

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5 (2005-06).

